

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES

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JUN 12 2012

Circuit One Legal

T.S. and R.S.

Petitioner,

v.

Case Number: 12-003CF  
(Revocation of Foster Care License)

Department of Children and  
Families

Respondent.

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**RECOMMENDED ORDER**

This cause came on for hearing before me via telephonic conference on May 3, 2012.

**APPEARANCES**

For Petitioners: T.S., pro se

For Respondent: Katie George Assistant Regional Counsel  
Department of Children and Families  
160 Governmental Center Suite 601  
Pensacola, FL 32502

**STATEMENT OF THE ISSUE**

Whether the Petitioners' foster care license should be revoked [REDACTED]

[REDACTED]

**PRELIMINARY STATEMENT AND PROCEDURAL HISTORY**

By letter dated November 30, 2011, Respondent, Florida Department of Children and Families ("DCF" or "Department") provided R.S. and T.S. ("Petitioners") notice that DCF intended to revoke their license to operate a foster home. The basis for the revocation was the use

[REDACTED] DCF and T.S. and R.S. stipulated that the issue to be resolved is whether Petitioner's foster care license should be revoked [REDACTED]  
[REDACTED]

Petitioners requested an administrative hearing on December 8, 2011. The agency clerk traversed the Petitioners request and determined there were no disputed issues of material fact. Accordingly, on January 5, 2012, the matter was referred to the undersigned to conduct an informal hearing as provided in §120.57(2) Fla. Stat. On March 7, 2012, Petitioners requested an oral hearing and the Department filed a Motion for Extension of Time ("DCF Motion") to allow DCF to obtain a court order to provide redacted Child Protection Team ("CPT") documents to Petitioners related to the May 2011 injury and for use by the Department during the administrative hearing process. The undersigned granted both Petitioners' request for hearing and the DCF Motion. The order granting the DCF Motion expressly afforded to Petitioners the opportunity to object to authenticity or relevance of the CPT documents. Petitioners did not object on either ground. Absent objection, the CPT records were moved and admitted into evidence. DCF notice Dr. Carol Sekhon, physician for the CPT, for deposition and took her deposition. T.S. attended said deposition and cross examined Dr. Sekhon.

At the hearing, T.S. testified but R.S. did not, nor did R.S. attend the hearing. DCF presented the testimony of the following witnesses: Melissa Sidoti, Family and Community Services Manager, and Connie Werner, Foster Home Development Team Manager. The Department offered into evidence the deposition transcript of Dr. Sekhon, and tendered Dr. Sekhon as an expert witness. The deposition transcript was admitted into evidence without objection, and Dr. Sekhon accepted as an expert witness. The parties offered Joint Exhibit 1 comprised of the Department's denial letter dated November 30, 2011 and Petitioners' Request

for Hearing received December 8, 2011. The Joint Exhibit 1 was admitted into evidence. At hearing, R.S. and T.S. offered no other exhibits.

The Department offered the following 5 exhibits and all were admitted into evidence.

Exhibit 1 -Abuse Report number 2011-119888.

Exhibit 2-Bilateral Service Agreement with attachment A, Safety and Discipline Plans signed November 10, 2010 by R.S. and T.S.

Exhibit 3-Specialized Therapeutic Foster Parent Agreement signed January 11,2010 by R.S. and T.S.

Exhibit 4-Safety Policies, including the Safety, Pool and Discipline Policy signed November 10, 2010 by R.S. and T.S.

Exhibit 5-Child Protection Team Records -A 13 page composite exhibit consisting of Specialized Interview Summary, Medical Exam Report, Final Case Summary Report, and Photographs.

The exhibits will be cited by "DCF or Joint" with the number and the deposition transcript will be cited at "Tr." followed by the page number. All references to the Florida Statutes are to the 2011 edition unless otherwise noted.

After the hearing, both parties timely submitted proposed recommended orders. The proposed recommended orders were consulted, reviewed, and considered in preparing this order.

#### **FINDINGS OF FACT**

There were no disputes of material fact between Petitioners and DCF. However, a recital of the facts underlying DCF's proposed revocation of Petitioners' foster care license is necessary.

Petitioners have been licensed foster parents for six years. Petitioners hold a license to provide out of home care (foster care) for children, as defined in §39.01(31), and as issued pursuant to §409.175. Pursuant to this licensing, Petitioners annually executed a Bilateral Services Agreement ("BSA") with DCF. In addition, Petitioners are also licensed to provide

Therapeutic Foster Care, and to this end, have entered, and annually re-entered, into a Specialized Therapeutic Foster Parent Agreement ("STFPA") with Lakeview Center as DCF's agent. In executing both agreements, Petitioners acknowledged both receipt and knowledge of DCF's discipline policies as to foster children in Petitioners' care. Petitioners agreed to comply with such policies. The terms of the BSA and STFPA are consistent with, and implement the requirements of Fla. Admin. Code R. 65C-13.029(1)(g)11.e.(IV).

Specifically, the BSA, on page 2, item n. within the section entitled "Foster Parent Responsibilities to the child include:" provides: "To adhere to the department's safety and discipline policies, see Attachment A. Failure to comply with the department's safety and discipline policies may result in the removal of children from the home." Ex. 2 at 2. Item 6 of Attachment A to the BSA provides, "The foster parents must not use corporal punishment of any kind." Ex. 2 at 8. The STFPA provides that foster parent signatories must "uphold and maintain all behavioral policies for the program, to include the Discipline Policy and Federal and State guidelines." Ex. 3 at 7. The Discipline Policy for the STFPA is identical to the Discipline Policy for the BSA. Ex. 4. The BSA provides that failure to comply with *any* of the provisions of the BSA may result in administrative action by the Department which could include, *inter alia*, revocation or denial of further licensure. Ex. 2 at 4. Similarly, the signing page for the "Safety, Pool and Discipline Policy" warns Petitioners that failure to comply with the policies could result in termination of their license. Ex. 4. Moreover, Petitioners explicitly agree that they will "abide by the State policy regarding discipline of foster and shelter children, which includes no corporal punishment being used." Id.

On or about Monday, May 23, 2011, DCF responded to a call [REDACTED]

[REDACTED] DCF interviewed the child and [REDACTED]

teachers at [REDACTED] school. The child had been absent from school the previous Thursday and Friday.

[REDACTED]

[REDACTED]

[REDACTED] As a result [REDACTED]

DCF began proceedings to revoke Petitioners' foster care license.

#### CONCLUSIONS OF LAW

DCF is the agency charged with the responsibility of licensing foster parents in the state of Florida. Section 409.175, Fla. Stat. (2011) reads in pertinent part:

- (9)(a) The department may deny, suspend, or revoke a license.
- (b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

\* \* \*

- 2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

The Department seeks revocation of Respondent's foster care license. As the party asserting the affirmative of an issue before this administrative tribunal, the Department has the burden of proof. Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981). However, in accordance with the definition of "license" contained in Subsection 409.175(2)(f), Florida Statutes, the licensure status previously awarded to Respondent is not a professional license and does not create a property right. Therefore, the Department must establish facts which support its position by a preponderance of the evidence rather than by a clear and convincing standard normally imposed in professional licensure cases. See, Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

Fla. Admin. Code R. 65C-13.029(1)(e) provides: "Licensed out-of-home caregivers shall accept the direction and supervision given by the department or supervising agency in caring for the children." Fla. Admin. Code R. 65C-13.029(g)11.e.(IV) provides: "(IV) Licensed out-of-home caregivers shall not use corporal punishments of any kind." The BSA and the STFPA each require the Petitioners to adhere to policies that implement that rule. The rule, BSA, and STFPA warn Petitioners that they might lose their foster care license if they use corporal punishment.

The undisputed evidence shows that Petitioners did [REDACTED] violating Fla. Admin. Code R. 65C-13.029(g)11.e.(IV), DCF's discipline policy, the BSA, and the STFPA. Petitioners argue, however, that revocation of the foster care license is too severe a sanction. [REDACTED]

Section 409.175(1)(b) provides:

(b) Nothing in this section gives any governmental agency jurisdiction or authority to regulate, control, or supervise the form, manner, or content of any religious curriculum or teachings of a family foster home or of a child-caring or child-placing agency, provided the health, safety, or well-being of the child is not adversely affected.

Similarly, §409.175(5)(e) provides:

(e) The department shall not adopt rules which interfere with the free exercise of religion or which regulate religious instruction or teachings in any child-caring or child-placing home or agency; however, nothing herein shall be construed to allow religious instruction or teachings that are inconsistent with the health, safety, or well-being of any child; with public morality; or with the religious freedom of children, parents, or legal guardians who place their children in such homes or agencies.

Petitioners' argument is unfounded. The plain language of §409.175(1)(b) prohibits DCF from regulating, controlling or supervising the form, manner, or content of a religious curriculum or teaching. The plain language of §409.175(5)(e) prohibits the department from adopting rules that interfere with religious instructions or teaching. The statutes on their faces do not address religious *practices* as applied to persons who are not members of the same religion or those who lack the capacity to choose a religion. Moreover, §409.175(5)(e) expressly *limits* the religious instruction or teaching to prohibit interference with the religious freedom of children, parents, or legal guardians.

Petitioners should have raised the conflict between their beliefs and the DCF discipline policy before Petitioners executed the BSA and the STFPA, and not in a license revocation proceeding. By signing and agreeing to abide by the very policy that they now claim interferes with their religious practice, Petitioners waived the right to claim the prohibition of corporal punishment infringed on their religion.

[REDACTED]

Petitioners' behavior [REDACTED] is troubling. By keeping the child home from school, Petitioners sought to conceal the injury. [REDACTED]

[REDACTED] Petitioners were not candid about what happened. These two facts show a consciousness of guilt. [REDACTED]

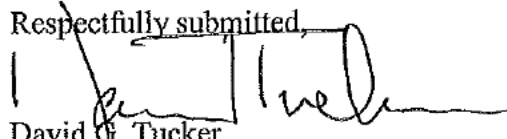
[REDACTED]

#### RECOMMENDATION

Based on the foregoing, the undersigned recommends that the Secretary of the Department enter a final order REVOKING Petitioners' license to provide foster care and decline to renew same.

Done in Jacksonville, Florida, this 4 June, 2012.

Respectfully submitted,

  
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